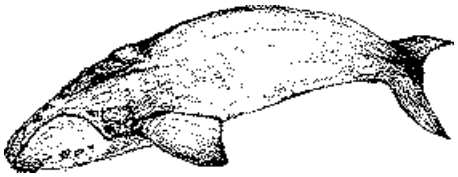
Summary of the Final Rule Implementing

The Atlantic Large Whale Take Reduction Plan

An evolving plan to reduce the risk to Northern right whales and to humpback, fin, and minke whales posed by lobster pot/trap and gillnet gear in the U.S. Atlantic Ocean

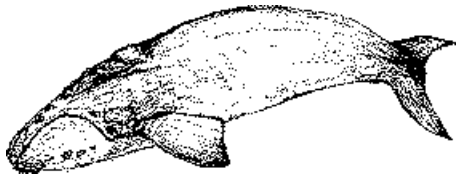


Contact:

George Liles
NOAA/NMFS/NER
(508) 495-2378
or
Teri Frady
(508) 495-2239

February 1999

Atlantic Large Whale Take Reduction Plan Summary



Overview

As required by the Marine Mammal Protection Act, the National Marine Fisheries Service has developed a plan to reduce the risk of serious injury or mortality of large whales due to accidental entanglements in U.S. commercial fishing gear. The Atlantic Large Whale Take Reduction Plan (ALWTRP or "Plan") is primarily focused on the northern right whale, one of the rarest species in the world. The Plan is also expected to reduce entanglements of humpback and fin whales (which are also listed as endangered species) and of minke whales (which are not endangered). The Plan affects lobster pot gear and various types of gillnet gear.

The Plan uses five general strategies to accomplish its goals. First, some critical right whale habitats are closed to some types of gear during times when right whales are likely to be present. Second, there are general prohibitions on some fishing practices that could entangle whales, such as leaving inactive gear in the water. Third, NMFS is building a network of persons who can assist in removing fishing gear from whales, with a goal of minimizing the seriousness of an entanglement. Fourth, NMFS is funding gear research and development to develop technological solutions to reduce entanglements, such as "weak links" that break when subjected to the prolonged pull of an entangled whale but do not break when pulled by a fisherman. Fifth, NMFS is improving its outreach effort to inform fishermen of the problem of whale entanglements and to seek their ideas on technical solutions to the problem.

Goals of Plan

The Atlantic Large Whale Take Reduction Plan has two goals. The short-term goal is to reduce serious injuries and mortalities of right whales in U.S. commercial fisheries to below 0.4 animals per year by January 1998. The long-term goal is to reduce by April 30, 2001 entanglement-related serious injuries and mortalities of right whales, humpback whales, fin whales, and minke whales to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fisheries, the availability of existing technology and existing State and regional fishery management plans.

Although NMFS is not aware of any right whales entangled in U.S. fishing gear during the first six months of the implementation of the ALWTRP, it is unable to determine whether the short-term goal of the ALWTRP was met.

General Strategy

To reach the short-term goal, the ALWTRP was expected to achieve the necessary take reductions within 6 months through:

Closures of critical habitats to some gear types during times when right whales are usually present;

restricting the way strike nets are set in the southeastern U.S. gillnet fishery to minimize the risk of entanglement and requiring observers on shark gillnet vessels operating adjacent the southeast U.S. critical habitat;

requiring that all lobster and sink gillnet gear be set in such a way as to prevent line from floating at the surface;

requiring all lobster and anchored gillnet gear to have at least some additional characteristics that may reduce the risks of entanglements;

requiring that drift gillnets in the mid-Atlantic be either tended or stored on board at night;

improving the voluntary network of persons trained to assist in disentangling right whales; and

prohibiting storage of inactive gear in the ocean.

The steps in the implementation of the ALWTRP designed to achieve the long-term goal include:

A commitment to improve public involvement in take reduction efforts, including conducting outreach and educational workshops for fishermen;

instituting "Take Reduction Technology Lists" from which fishermen must choose gear characteristics that are intended to decrease the risks of entanglement;

facilitating research and development of fishing gear that will reduce the risk of entanglement;

continuing to improve the disentanglement effort, including encouraging more cooperation from fishermen;

implementing a gear marking program;

developing contingency plans in cooperation with states for when right whales are present at unexpected times and places;

working with Canada to decrease entanglements in its waters;

improving monitoring of the right whale population distribution and biology;

conducting aerial surveys to monitor whale distribution, fishing effort and shipping traffic,

maintaining a network to alert maritime users about right whale distribution; and

establishing the framework of an abbreviated rule-making process to allow NMFS to change the requirements of the plan through notification in the *Federal Register*, thereby improving the responsiveness of NMFS.

Report of first year activities

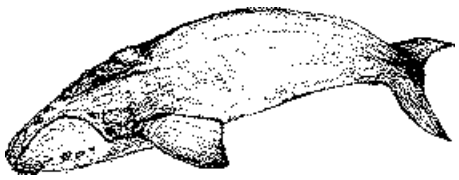
During the first year of the Plan, NMFS raised the level of funding for research and development of fishing gear that reduces the risks of entanglement, expanded its disentanglement efforts, increased efforts to raise awareness of marine mammal entanglement problems, conducted or contributed funds to conduct aerial surveys to monitor the distribution of right whales, to collect photographs for individual identification, and to alert ship operators of the locations of right whales, and increased funding for basic research on right whale population and conservation biology.

The goal of the gear research is to develop new fishing gear or methods that minimize the risk of entanglements by large whales, either by reducing the chances that a whale will encounter the gear or by reducing the likelihood that gear, when encountered, will entangle the animal. Since the publication of the Plan in 1997, research has been conducted in the following areas: (1) design, development, testing, and manufacture of inexpensive weak links, (2) remotely operated vehicle observations of the configuration of gillnets and lobster gear, (3) estimation of the tractive (pulling) force of right whales, (4) land testing of gillnet modifications, (5) baleen tests with various lines, knots, and splices (to understand how a line gets caught in baleen), and (6) design and fabrication of underwater and dry load

cell systems for measuring the hauling and towing loads of fishing gear and the tractive force of animals.

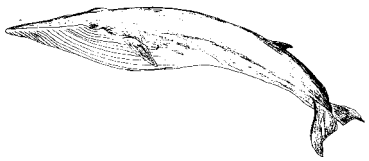
The current disentanglement effort consists of a primary team which has field station support in the northern Gulf of Maine/Bay of Fundy, central Gulf of Maine, southern

Gulf of Maine, and Georgia/Florida. The northern Gulf of Maine/Bay of Fundy field station is operational only when biologists are conducting seasonal right whale research. The U.S. Coast Guard (USCG) provides critical support in monitoring initial entanglement reports and transporting persons experienced in disentangling whales. Although the Disentanglement Team currently attempts to respond to all legitimate entanglement reports, the priority for response is for any immediately life-threatening event of endangered right and humpback whales. NMFS has also created a permanent contact point in Maine to supplement the existing infrastructure operating out of the



Center for Coastal Studies in Provincetown, Massachusetts. Plans are also underway to establish a disentanglement team in the mid-Atlantic region.

The success of the ALWTRP depends on the cooperation of fishermen in assisting disentanglement efforts as well as in providing ideas for gear research. During the first year of the Plan, NMFS hired a person in Maine to work directly with the fishermen on these matters. NMFS has held 21 meetings in Maine to date, with over 300 fishermen in attendance, of which about 200 have indicated they wish to participate in additional training to further assist in any disentanglement effort in their area. From this series of meetings, a network of qualified responders will be established to coordinate reports, carry out monitoring, and assist the existing Team in response to entangled whales along the coast of Maine. NMFS also met with

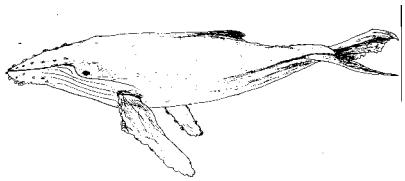


fishermen directly at fishermen's forums and contracted Sea Grant to discuss proper reporting and operational procedures regarding entangled whales and to gather ideas for appropriate gear modifications. Continued outreach in Maine, southern New England, the southeast U.S. and in the Mid-Atlantic are planned.

Existing partnerships with the USCG and the Massachusetts Division of Marine Fisheries and Massachusetts Environmental Trust have resulted in significant additional resources for carrying out the tasks outlined in the ALWTRP. Similar partnerships with the 5th, 7th and 8th USCG districts are currently being finalized. The USCG conducted aerial surveys for large whales and assisted in disentanglement response support, as well as providing funds for additional aerial survey contracts carried out by NMFS. The State of Massachusetts funded aerial survey coverage of Cape Cod Bay, as well as a

habitat characterization study of the Bay in 1998. Right whale sightings information from all sources were provided to the northeast right whale alert system, designed to inform mariners of the presence of right whales in critical habitats.

The sighting data were coordinated,

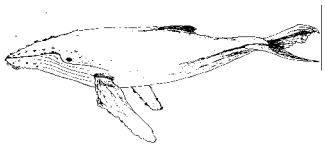


verified, and processed by NMFS. Verified sightings for each survey day are disseminated by an automated fax system immediately after processing, and made available to all marine resource users through various media. The coordinates of the right whale sightings were broadcast for 24 hours by USCG via Broadcast Notice to Mariners and NAVTEX, NOAA Weather Radio, and Army Corps of Engineers Traffic Controllers at Cape Cod Canal to both target shipping traffic as well as other marine resource users. Maps with right whale sightings boxes are also posted on Massachusetts and NMFS web pages and linked to other sites such as WHALENET. A NMFS Inquiry Line at the Northeast Regional Office provides right whale sighting faxes on demand to all interested callers.

During the first year of the Plan, NMFS drafted a memorandum of Agreement (MOA) with USCG districts 5, 7 and 8 to formalize cooperation in protecting marine mammals and endangered species, especially in implementing a disentanglement network. (This MOA is currently undergoing final review within the Department of Commerce.)

An MOA was also signed with the Navy, USCG and the Army Corps of Engineers to formalize cooperation in measures to protect northern right whales in the southeast United States. This has provided a mechanism for funding the southeast U.S. aerial surveys of right whale critical habitat and the associated right whale alert system.

NMFS has continued to provide administrative support for the right whale alert system. It has also conducted aerial surveys to the east, north and south of critical habitat in order to determine whether there may be a need to extend current critical habitat boundaries.



Aerial surveys were conducted in the U.S. coastal waters of the mid-Atlantic states to document abundance and distribution of humpback whales in relation to vessel traffic and fishing effort.

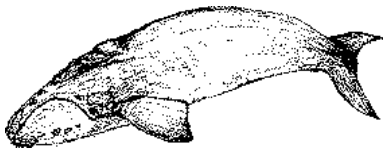
Outreach activities are an integral part of all components of the ALWTRP. NMFS contracted the Sea Grant offices at the University of Maine and University of Rhode Island to set up an outreach program in the New England and Mid-

Atlantic areas. Sea Grant organized meetings, workshops, and seminars at key fishermen's forums held from Fall 1997 through Spring 1998 covering the area from North Carolina to Rhode Island. Sea Grant also prepared outreach handout materials and videos for use at these and other forums and for the local meetings set up in the Northeast. A letter was sent to all State and Federal lobster and gillnet fishermen in the Northeast providing information about right whales, the entanglement problem, and fishermen's responsibilities under the ALWTRP. As mentioned above, NMFS also hired a Maine Plan Coordinator to work closely with the Maine Lobster Zone Council system to carry out outreach education and gear research collaboration.

In the past year, NMFS also met with shark gillnetters to develop awareness of right whales and their current plight. These meetings were designed to explain threats to right whales in the southeast United States and to discuss the precautions necessary around them and what additional measures the fishery might take to decrease the risk of interactions. In addition to the above-mentioned meeting, letters were sent to all known shark gillnetters explaining the ALWTRP regulations. The letters explained the need to contact NMFS to arrange for observer coverage during the right whale calving season. During the year, this observer program was established.

Maine Plan Coordinator Glenn Salvador (foreground) with Captain Steve Beote, off Kittery, Maine, testing a "line grabber" designed by Dave Wiley.

The Northeast Fisheries Science Center (NEFSC) has increased their Protected Species Branch staff to include a large whale research coordinator. Key research on large whales conducted or funded by NMFS include: (1) maintaining the right and humpback whale photo ID catalogues where individual identification of animals from photographs taken throughout the western north Atlantic are processed; (2) analyzing data collected from the right whale photo ID catalogue for population assessment; (3) expanding right whale genetics studies to determine the matriarchal lines that make up the population; (4) supporting right whale stranding response to maximize the information collected from each carcass; (5) conducting directed right whale photo-ID surveys in the Great South Channel; (6) assessing capabilities to locate whales acoustically; (7) evaluating the status of the North Atlantic humpback whale, and (8) surveying potential offshore summer habitats for right whales.



Changes in the Final Rule From the Interim Final Rule

1. Definition of "Lobster Trap." In this final rule, NMFS changes the definition of "lobster trap" to be: "any trap, structure or other enclosure that is placed on the ocean bottom and is designed to or is capable of catching lobsters." The intent of this definition is to include traps and pots into which lobsters may crawl and be caught by virtue of their inability to find their way out, and not to include mobile gear or devices that catch lobsters through entanglement. The definition includes black sea bass traps and scup traps.

2. Definition of "Gillnet". In this final rule, NMFS is amending the definition to be as follows: "fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term 'gillnet' includes gillnets of all types, including but not limited to, sink gillnets, other anchored gillnets (e.g. stab and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel." The term is intended to include gillnets with or without tie-downs.

3. Elimination of exempted waters in the Gulf of Maine. In this final rule, NMFS eliminates the exempted waters in the Gulf of Maine (except waters landward of the first bridge over any bay or river) until such time as the TRT can advise NMFS on the most appropriate boundaries for exempted waters in that area. Note, however, that the gear marking provisions that would have applied in all non-exempted waters under the interim final rule have also been changed and will not apply in most coastal waters in the Gulf of Maine.

4. Addition of exempted waters in Rhode Island. In this final rule, the exempted areas in Rhode Island coastal waters are intended to include the following rivers and coastal ponds where right whales have never been seen: Winnapaug Pond, Green Hill Pond, Potter Pond, and the Sakonnet River.

5. Gear marking requirements. In this final rule, gear marking is no longer required in most areas. Gear marking will only be required in right whale critical habitat, in the southeast observer area and on Stellwagen Bank and Jeffreys Ledge in the Gulf of Maine. Also, gillnetters in the southeast U.S. need only mark their lines every 100 yards (91.4 m), not every 100 feet (30.5 m), when this requirement comes into effect in November 1999.

6. Gear requirements for lobster fishers in

Cape Cod Bay critical habitat. In this final rule, NMFS adopts the current version of the regulations established by the Commonwealth for lobster gear set in Cape Cod Bay from January 1 to May 15.

7. Elimination of anchoring options from the gillnet take reduction technology list. In this final rule, NMFS eliminates from the Gillnet Take Reduction Technology List the options for anchoring the lead line with 22-lb (10 kg) danforth-style anchors, 50 lb (22.7 kg) dead weights or lead lines weighing 100 lb (45.4 kg) or more per 300 ft (92.4 m). The purpose is to remove options from the gear technology list that could make it more difficult for a whale to escape from an entanglement.

8. The definition of "anchored gillnet" is modified slightly to make clear that "stab nets" are included in this definition. Likewise, the definition of "sink gillnet" is amended to clarify that the regulations applying to sink gillnets are intended to apply to "stab nets". Similarly, the definition of "gillnet" has been modified to clarify that what is termed "meshes" in some places is included in the definition. The definition of "Strikenet or to fish with strikenet gear" is amended slightly to make clear that strikenets are considered a category of gillnets for the purposes of this rule and that persons fishing with strikenets must comply with the call-in requirement to fish anywhere within the SEUS observer area.

9. Several definitions were modified slightly to correct for grammatical errors or to add clarity, including: (1) "driftnet, drift gillnet, or drift entanglement gear", (2) "tended gear or tend", and (3) "weak link."

10. New definitions for "shark gillnetting" and "to strikenet for sharks" are included to clarify the fisheries affected by this rule. These new definitions do not change the fisheries intended to be covered by the Plan.

Fishery-Specific Regulations

American Lobster Trap/Pot Fisheries

No floating line at the surface.
No wet storage of gear

Cape Cod Bay

Buoy lines marked (orange and red)

January 1 through May 15

All buoys must have a weak link with a maximum breaking strength of up to 500 lb (226.7 kg)
All traps must be set in either "doubles" or trawls of four or more traps
All buoy lines must be made of sinking line except for the bottom third of the line, which may be floating line

All ground lines between traps must be sinking line.

May 15 to December 31

At least two characteristics from the Take Reduction Technology List.

Great South Channel

Buoy lines marked (yellow and red)

April 1 to June 30

Closed to lobster gear

July 1 to March 31

Two characteristics from gear technology list (see page 13)

American Lobster Trap/Pot Fisheries (continued)

Stellwagen Bank/Jeffreys Ledge
Buoy lines marked (black and red)
Two characteristics from gear technology list

Northern Lobster Waters (north of 41°30' N)
One characteristic of gear technology list, year round

Southern Lobster Waters (south of 41°30' N)
December 1 to March 31
One characteristic of gear technology list

The Lobster Take Reduction Technology List

1. All buoy lines are 7/16 inches (1.11 cm) in diameter or less

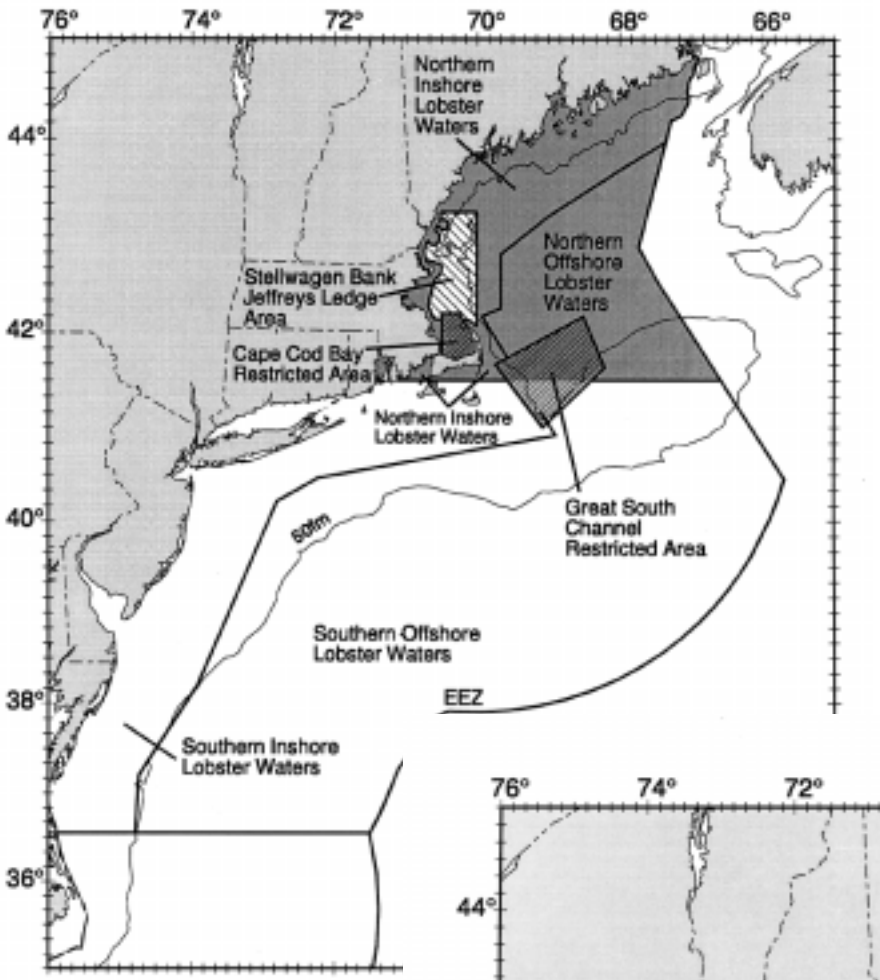
2. All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate breaking strength, hog rings, or rope stapled to a buoy stick.

3. For lobster traps set in offshore lobster areas only, all buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 3780 lb (1714.3 kg)

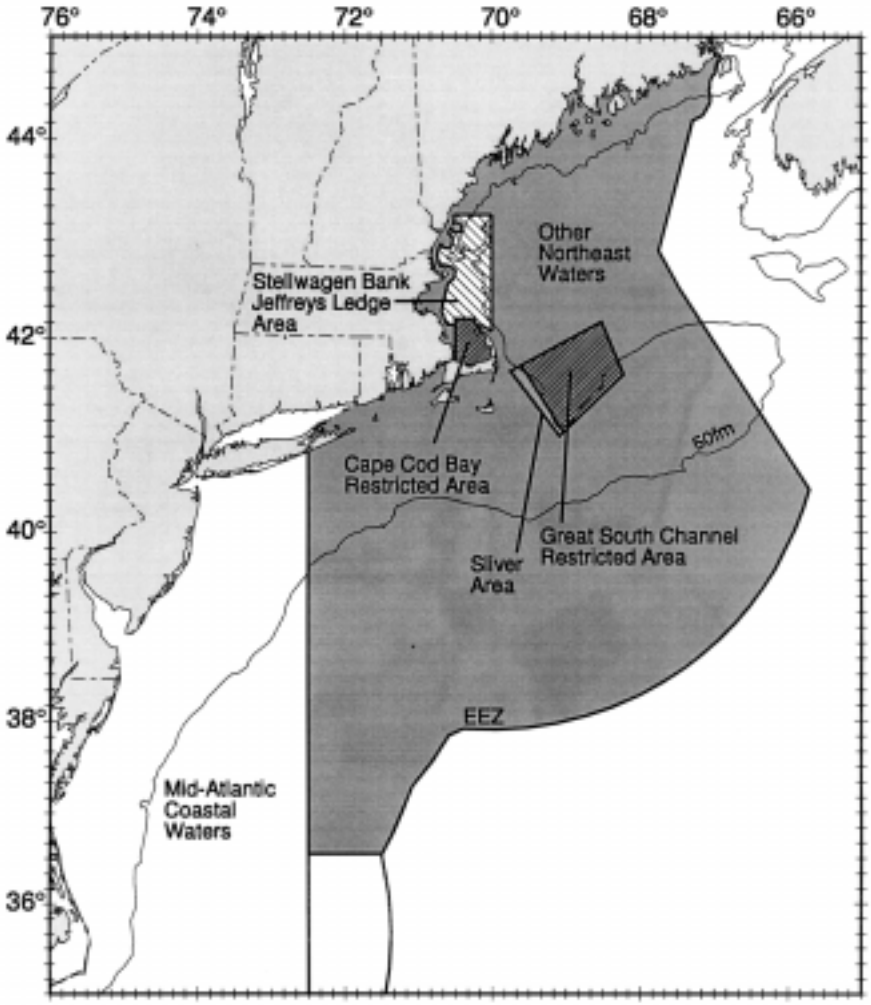
4. For traps set in offshore lobster areas only, all buoys are attached to the buoy line by a section of rope no more than 3/4 the diameter of the buoy line

5. All buoy lines are composed entirely of sinking line

6. All ground lines are made of sinking line.



Lobster Gear Restrictions



Gillnet Gear Restrictions

Anchored Gillnet Fisheries

No floating line at the surface.

Cape Cod Bay

Buoy lines marked (orange and green)

January 1 through May 15

closed to gillnetting

May 15 to December 31

At least two characteristics from the Take Reduction Technology List

Great South Channel

Buoy lines marked (yellow and green)

April 1 to June 30

Closed to gillnetting except Sliver Area

Two characteristics from gear technology list in Sliver Area

July 1 to March 31

Two characteristics from gear technology list

Stellwagen Bank/Jeffreys Ledge

Buoy lines marked (black and green)

Two characteristics from gear technology list

Other Northeast Waters (east of 72°30' W)

At least one characteristic from gear technology list

Mid-Atlantic Gillnets (west of 72°30'W, north of 33°51'N)

December 1 to March 31

At least one characteristic from gear technology list from

Gillnet Take Reduction Technology List

1. All buoy lines are 7/16 inches (1.11 cm) in diameter or less.

2. All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate breaking strength, hog rings, or rope stapled to a buoy stick.

3. Weak links with a breaking strength of up to 1100 lb (498.8 kg) are installed in the float rope between net panels.

4. All buoy lines are composed entirely of sinking line.

Mid-Atlantic Coastal Gillnet Fishery - Drift Gillnets

From December 1 to March 31, no overnight sets unless gear is attached to the vessel

Southeast U.S. Shark Gillnet Fishery

Gear marking required in SEUS observer area (blue and green)

From November 15 to March 31

Critical habitat closed to gillnetting, except strikenett

Call-in required before fishing in observer area

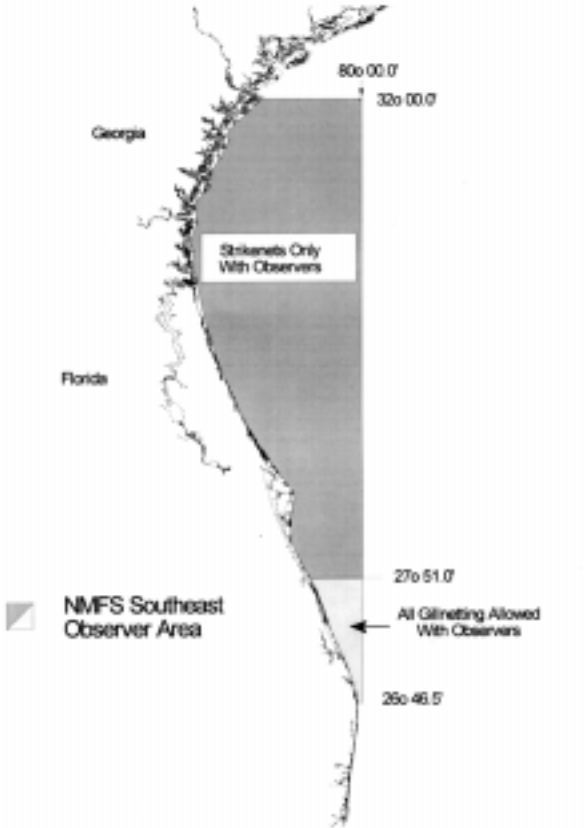
Strikenetting allowed in critical habitat and observer area only if:

(A) No nets are set at night or when visibility is less than 500 yards (460 m)

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, fin or minke whale.

(D) If a right, humpback, fin or minke whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.



November 15 to March 31 Shark Gillnetting